

RESPONSE TO COMMENTS  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7  
HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT PART II  
for HAZARDOUS and SOLID WASTE AMENDMENTS of 1984  
September 20, 2012

MRP Properties Company, LLC  
1400 South M Street  
Arkansas City, Kansas 67005  
EPA RCRA I.D. Number: KSD087418695

In July of 2012 the United States Environmental Protection Agency (EPA) Region 7 prepared a draft Resource Conservation and Recovery Act (RCRA) Part II Hazardous Waste Management Permit for MRP Properties Company, LLC (MRP), 1400 South M Street, Arkansas City, Kansas for its former refinery facility. The agency has made the decision to issue a Final Part II Permit following receipt of comments on the draft. This Final Part II Permit will replace the Part II Permit issued to MRP Properties Company, LLC on September 20, 2001.

Two complementary draft permits were developed independently for this facility; Part I by the Kansas Department of Health and Environment (KDHE) and Part II by EPA Region 7. The Part I Permit pertains to closure/post-closure of the hazardous waste management units as well as corrective action within the waste management area; and the Part II Permit, pertains to Hazardous and Solid Waste Amendments (HSWA) requirements for site-wide corrective action of all solid waste management units.

Public participation activities associated with the draft Part I Permit and draft Part II Permit were conducted in accordance with Kansas Administrative Regulations (KAR) 28-31-124(e), and 40 Code of Federal Regulations (CFR) Part 124, respectively. Placed on public notice jointly, the draft permits were subject to public comment beginning on July 23, 2012 and ending on September 5, 2012. The Administrative Records for both draft permits were available for public review throughout the public comment period at the Arkansas City Public Library, the Kansas Department of Health and Environment Central Office, and the EPA Region 7 Library, during normal business hours. Notice of the 45 day public comment period was published in the Arkansas City Traveler newspaper and the Kansas Register. Notice of the public comment period was also broadcast on the local Kansas Public Radio station KMUW 89.1. These notices announced that written comments could be submitted for consideration by the regulatory agencies in making the final permit decision. A public availability session was hosted in Arkansas City the afternoon of August 29, 2012 as an opportunity for the public to ask questions and discuss potential concerns, and a public hearing was held the evening of August 29, 2012 to receive verbal comments.

No verbal comments were received, but both agencies received written comments from the Permittee. KDHE received 28 comments on the draft Part I Permit and EPA received 5 comments on draft Part II Permit. EPA made revisions to the draft based on the comments received, additionally one administrative error was corrected. A Final Permit Part II is attached for review and signature, but the exact date should be left blank for coordination with KDHE regarding synchronization of issuance. The exact comments EPA received on the draft Part II

Permit from the Permittee, and a response to each was prepared according to the requirements of Title 40 CFR §124.17, and is provided below; as well as an explanation of the administrative error that was corrected. EPA's responses are listed underneath each comment.

Both agencies, having made revisions to their respective drafts based on comments received, have decided to issue final the Final Part I Permit and the Final Part II Permit concurrently. Since comments were received and the Final Part II Permit is changed from the draft, it shall become effective 33 days after issuance, which allows 3 days for mailing, in accordance with 40 CFR §124.15(b).

Since comments were filed, any commenter may petition the Environmental Appeals Board (EAB), pursuant to Title 40 CFR §124.19(a), to review any condition of the Part II Permit decision to the extent of their comments made during the comment period. Any person who failed to file comments may petition for administrative review only to the extent of the changes from the draft to the final Part II Permit. All petitions for review must be received by the EAB no later than thirty-three (33) days from the date of this notice.

Any petition for review shall include a statement of the reasons supporting the review, including a demonstration that any issues being raised during the public comment period were raised to the extent required by Title 40 CFR §124.19 and when appropriate, a showing that the condition in question is based on: (1) a finding of fact or conclusion of law which is clearly erroneous, or (2) an exercise of discretion or an important policy consideration which the EAB should, in its discretion, review. Please see the web site at <http://www.epa.gov/eab> for Frequently Asked Questions (FAQ) and additional information regarding the EAB.

Information on how to electronically file documents may be obtained on the EAB's web site, under the heading "Electronic Filing."

The EAB may be reached by telephone at (202) 233-0122.

Submissions that are sent through the U.S. Postal Service (except by Express Mail) must be addressed to the following EAB mailing address with sufficient time allowed for delivery so that they are received by the EAB no later than thirty-three (33) days from the date of this notice:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

Submissions that are hand-carried, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service commercial delivery service must be delivered to the following address:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, N.W.  
Washington, DC 20004

**Comment 1:**

Section III.A. Authority

The second paragraph, Page 24 of 66 – states that EPA has designated KDHE as its Project Coordinator (technical lead) for the Corrective Action requirements in Part II Permit Condition III with the exception of the Cost Estimate and Financial Assurance requirements for the Corrective Action. The last sentence states "...EPA may, at any time and at its discretion, change its designation of Project Coordinator (technical lead)." The permit language acknowledges that KDHE and EPA will confer during the course of the corrective action work; however, there is no indication that KDHE approval is the same as EPA approval.

We proposed the addition of the following revisions to the second paragraph on Page 24 of 66:

Pending approval of KDHE's Corrective Action Program, EPA has designated the Kansas Department of Health and Environment (KDHE) as its Project Coordinator (technical lead) for the Corrective Action requirements in Part II Permit Condition III, with the exception of the Cost Estimate and Financial Assurance for Corrective Action requirements of Part II Permit Conditions III.O and III.P. EPA will review the progress of the work being performed by the Permittee to insure corrective action is being performed in a timely manner and will confer with KDHE on the protectiveness of the work being carried out. Work Plans and work conducted pursuant to and in compliance with KDHE-approved Work Plans will be considered to be approved by EPA if not commented on within 45 days of the submittal to EPA. EPA may, at any time and at its discretion, upon 30 days' written notice, change its designation of Project Coordinator (technical lead).

**EPA Response to Comment 1:**

EPA modified the draft permit in response to this comment. EPA used the language proposed by the Permittee with a change to the 3<sup>rd</sup> sentence. The third sentence in the Final Part II Permit reads, "Work Plans and work conducted pursuant to and in compliance with KDHE-approved Work Plans will be considered to be approved by EPA, if EPA does not provide notice it intends to comment within 45 days of the submittal to EPA."

**Comment 2:**

Section III.D. Interim Measures and Stabilization; Paragraph 6  
Paragraph 6 refers to the Quality Assurance Project Plan (QAPP). MRP submitted a QAPP in accordance with EPA requirements to EPA and KDHE in 2010. This QAPP was reviewed by EPA's Quality Assurance Office and approved by EPA and KDHE. A copy of the QAPP Approval Sheet is attached for reference. MRP requests that Paragraph 6 be deleted, or be revised to indicate that the IMOM Plan should incorporate the Approved (10/14/2010) QAPP.

**EPA Response to Comment 2:**

EPA revised Part II Permit Condition III.D.6. so that it will not be necessary for the Permittee to resubmit a QAPP with the IMOM Plan; instead the Final Part II Permit states that the Permittee must follow an EPA approved QAPP for performing the work. This requirement will not exclude the Approved (10/14/2010) QAPP, but it will need to be updated as appropriate.

**Comment 3:**

Section III.P. Financial Assurance for Completing the Work

The draft permit requires the Permittee to update the financial assurance instrument after every work plan and cost estimate is approved by the EPA. This effort will be a significant administrative burden to the Permittee. MRP proposes that with the exception of the financial assurance for the final corrective measures, that the financial assurance instrument be updated on an annual basis on the same schedule used for the Permit Part I financial assurance instrument to avoid duplicative work. MRP will provide an update to the financial assurance instrument after notification that EPA has selected a final Corrective Measure for the site.

MRP proposes inserting the following paragraph after the first paragraph in Section III.P.

**III.P. FINANCIAL ASSURANCE FOR COMPLETING THE WORK**

KDHE's Part I Permit includes state financial assurance requirements with which the Permittee must comply. In order to secure the full and final completion of all of the Work in accordance with this the Part II Permit, the Permittee shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work adjusted for inflation as required in Part II Permit Condition O. associated with the work required under 40 CFR §264.100(e)(1) and (2) and 40 CFR §264.101, for which the state of Kansas does not have RCRA authorization.

With the exception of a final remedy, the Permittee shall provide an annual update to the financial assurance instrument to incorporate remaining Corrective Action Work with approved cost estimates. The financial assurance instrument will be updated within 90 days after notification that EPA has selected final Corrective Measures.

~~Within thirty (30) days after the Director has approved the initial and any subsequent Estimated Cost of Work, including adjustment for inflation, in accordance with Part II Permit Condition~~ **Error! Reference source not found.**, On an annual basis, the Permittee shall submit draft financial assurance instruments and related documents to the Director, for the Director's review and approval in accordance with Part II Permit Condition **Error! Reference source not found.** The Permittee shall update the financial assurance documents by March 31 each year until the Corrective Action work is complete.

Within 90 days after notification that EPA has selected final Corrective Measures and approved the cost estimate, the Permittee shall submit draft financial assurance instruments and related documents to the Director, for the Director's review and approval in accordance with Part II Permit Condition III.S. Within ten (10) days after the Director's approval of the draft financial assurance instruments, the Permittee shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by the Director. The Permittee shall submit all original executed and/or otherwise finalized financial assurance instruments or other documents to the Director within thirty (30) days after the Director's approval of the draft financial assurance instruments. The Permittee shall submit annual updates to the financial assurance instruments by March 31 each year until the Corrective Action work is complete.

### **EPA Response to Comment 3:**

EPA found that revising the permit based on this comment was acceptable. The language proposed by the Permittee was not used, but changes were made to Part II Permit Condition III.P. and III.P.7.; so that the Permittee is required to update their financial assurance only once per year, instead of a combination of once per year plus each time EPA approves a work plan/cost estimate. Below are the Part II Permit Conditions III.P. and III.P.7. showing revisions from the draft:

### **III.P. FINANCIAL ASSURANCE FOR COMPLETING THE WORK**

KDHE's Part I Permit includes state financial assurance requirements with which the Permittee must comply. In order to secure the full and final completion of all of the Work in accordance with this the Part II Permit, the Permittee shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work adjusted for inflation as required in Part II Permit Condition O. associated with the work required under 40 CFR §264.100(e)(1) and (2) and 40 CFR §264.101, for which the state of Kansas does not have RCRA authorization.

Within thirty (30) days after the Director has approved the initial ~~and any subsequent~~ Estimated Cost of Work, and subsequent including adjustments for inflation, in accordance with Part II Permit Condition III.O., the Permittee shall submit draft financial

assurance instruments and related documents to the Director, for the Director's review and approval in accordance with Part II Permit Condition III.S.

Within ten (10) days after the Director's approval of the draft financial assurance instruments, the Permittee shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by the Director. The Permittee shall submit all original executed and/or otherwise finalized financial assurance instruments or other documents to the Director within thirty (30) days after the Director's approval of the draft financial assurance instruments. The Permittee shall submit annual updates to the financial assurance instruments by March 31 each year until the corrective action work is complete.

If the permittee is using a financial instrument described in Part II Permit Condition III.P.1.e. or III.P.1.f., the Permittee must incorporate remaining corrective action work listed in any cost estimates approved by EPA in the prior year at the time of the annual financial assurance update. In addition to the annual financial assurance update, within 90 days after notification that EPA has selected final corrective measures and approved the cost estimate, the Permittee shall submit draft financial assurance instruments and related documents, for the Director's review and approval in accordance with Part II Permit Condition III.S.

Any references in this Part II Permit Condition to the requirements of 40 CFR Part 264, Subpart H shall be construed to require the Permittee to comply with the substantive requirements for each instrument. In addition, rather than imposing requirements to provide cost estimates for closure and post-closure activities these provisions require a demonstration that the Permittee has obtained sufficient financial assurances to complete any work for which cost estimates are required by this Part II Permit. Finally, any financial assurance instrument submitted under this Part II Permit shall recite that the instrument is established to ensure completion of any corrective action work for which cost estimates are required under this Part II Permit rather than reciting that the instrument is being submitted for closure and post-closure activities.

#### **III.P.7. Increase of Amount of Financial Assurance.**

Whenever the most current EPA-approved estimated cost of the Work exceeds the amount of financial assurances provided pursuant to this Part II Permit, the Permittee shall revise the instrument(s) according to the requirements in this Part II Permit Condition. The Permittee shall notify the Director in writing within fourteen (14) days of determining that the most current EPA-approved estimated cost of the Work exceeds the amount of financial assurances provided. The conditions in this Part II Permit Condition shall apply upon such determination by the Permittee or the Director and shall apply when any of the following situations result in the estimated cost of the Work exceeding the amount of financial assurances provided: adjustment for inflation; additional costs resulting from a request by the Director for additional work under Part II Permit Condition III.N.; ~~EPA approval of a work plan pursuant to~~

~~this Part II Permit;~~ EPA selection of corrective measures or interim measures; or inadequacy of a current financial assurance instrument.

Within thirty (30) days following such determination, the Permittee shall obtain and present to the Director for review and approval pursuant to Part II Permit Condition III.S. a revised form of financial assurance (and otherwise acceptable under this Part II Permit Condition 0) that covers the most current EPA-approved estimated cost of the Work. Within ten (10) days after the Director's approval of the revised financial assurance instrument(s), the Permittee shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by the Director. The Permittee shall submit all original executed and/or otherwise finalized financial assurance instruments or other documents to the Director within thirty (30) days after the Director's approval of the revised financial assurance instruments.

**Comment 4:**

V. Facility Submission Summary Table 1, Submissions - we propose the following revisions to Table 1:

- i. Remove "and QAPP" from the second submission requirement for the reason presented in Comment 2 above.
- ii. For the Financial Assurance for Completing the Work requirement, change the Due Date to "On the annual anniversary of the financial assurance update – March 31.
- iii. Insert a new Submission Requirement; Financial Assurance for Final Corrective Measures, with a Due Date of ninety (90) days after notification that EPA has selected final Corrective Measures, and a Permit Condition III.P

**EPA Response to Comment 4:**

EPA revised the draft permit as requested, by deleting the reference to the QAPP, also EPA revised the table as requested in the second and third parts of the comment.

**Comment 5:**

V. Facility Submission Summary Table 2, Conditional Requirements - we propose the following revisions to Table 2:

- i. The 11<sup>th</sup> conditional requirement, to provide Written Notification that the Stabilization/Interim Measure is not effective, the Part II permit condition referenced is A.1.a.1, this should be III.D.6 or 7 depending on the status of Comment 2 regarding the QAPP.
- ii. The 13<sup>th</sup> conditional requirement, to adjust the estimated cost of the work for inflation, we propose revising the Due Date to "Annually, within thirty (30) days after the close of the Permittee's fiscal year"

**EPA Response to Comment 5:**

EPA revised the table, noting that the reference to Part II Permit Condition A.1.a.1. in the draft was an error, as it was intended to list Part II Permit Condition III.D.8.; therefore, it was revised

accordingly. For the second requested revision of this table, EPA did not revise the table as requested because Part II Permit Condition III.O.4. provides two options for a due date depending upon the type of financial assurance used and EPA chooses not to limit the options.

**Explanation of EPA's correction of an administrative error in the draft:**

V. Facility Submission Summary Table 2, Conditional Requirements: On the third row of this table in regards to "Reporting Anticipated Noncompliance" The due date as described in Part II Permit Condition II.E.11 should have been listed as "twenty (20) calendar days advance notice prior to any planned changes." The draft mistakenly listed 30 days instead of 20 days. The Final Part II Permit has been revised accordingly.